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7 EXAMINATION UNDER OATH

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9 MARK DeGEORGE

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15 EXAMINATION UNDER OATH of MARK DeGEORGE, taken  
16 at the offices of Rubin Fiorella & Friedman, on  
17 Tuesday, March 21, 2006, commencing at 3:45 p.m.,  
18 before MEL WINTER, a Shorthand Reporter and Notary  
19 Public within and for the State of New York.

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3 A P P E A R A N C E S:

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RUBIN FIORELLA & FRIEDMAN

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Attorneys for Defendant

292 Madison Avenue

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New York , New York 10017

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BY: JAMES MERCANTE, Esq., of Counsel

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2 M A R K D e G E O R G E, called as a witness,  
3 having been first duly sworn by MEL WINTER,  
4 a Notary Public within and for the State of  
5 New York, was examined and testified as  
6 follows:

7 EXAMINATION BY

8 MR. MERCANTE:

9 Q Good afternoon, Mr. DeGeorge. We  
10 represent your marine insurance company, Ace  
11 American Insurance Company, with respect to a  
12 claim concerning an injury to a guest aboard your  
13 boat, Rene Holstein; is that pronounced properly?

14 A Yes.

15 Q We sent you a letter requesting an  
16 examination under oath. You are here today  
17 appearing pursuant to our request for an  
18 examination under oath, correct?

19 A Yes, I am.

20 Q In that letter we requested that you  
21 bring with you some documentation. I am referring  
22 specifically to my letter dated March 15, 2006,  
23 and items A through G.

24 And have you brought any of that  
25 with you today?

1 DeGeorge

2 sell for has an office in Hackensack, New Jersey  
3 and from time to time I spend time there, or out  
4 of my New York office, or on the road trying to  
5 buy and sell product.

6 Q Does the 36-foot Sea Ray that you  
7 own, does it have any dinghy or tender?

8                   A         No, not necessary. I have it at a  
9 dock.

10 Q And on July 4, 2005, when the  
11 accident occurred, to Rene Holstein --

12 A Uh-huh.

13 Q -- who was on board the vessel at  
14 the time?

15                   A       I was probably a mile away when the  
16 accident occurred. I was on a jet ski, riding.

17 I can tell you who was on the boat  
18 that we took out.

19 Who exactly was on the boat and who  
20 was on a raft and who was floating around and  
21 swimming, I don't know. I wasn't there.

22 Q Start from that, the beginning of  
23 that day. Was Rene a guest of yours on the boat?

24 A Absolutely.

25 Q How long have you known Rene before

1 DeGeorge

2 that she had any sort of physical damage to  
3 herself. Just looked like she was in a slow mode  
4 that day.

5 And again, I didn't know her that  
6 well. After we had pulled in, right after the  
7 fireworks, I then decided to take my skis back  
8 home and flush them out with freshwater. Rene  
9 said she was going to take a nap, and when I came  
10 back I was going to pick her up and drive her back  
11 to her house in Great Neck.

12 Q Did you do that?

13 A No. What happened was when we got  
14 back from flushing out the skis, Rene was still in  
15 the forward cabin sleeping and I said, Rene  
16 something is not right. You're sleeping all day.  
17 What's wrong?

18 And she said, no, I just don't feel  
19 good. And she then went to the bathroom and let  
20 out a scream, and apparently when she tried to  
21 urinate, she filled up the toilet with blood.

22 At that point I was, you know,  
23 panicky. All I could think of was taking her to  
24 the hospital, which I did; took her directly to  
25 the Huntington Hospital.

1 DeGeorge

2 Everybody was going about their business.

3 Paul was talking on his phone. He  
4 told me he was on his phone. He heard something.

5 Her friend, Francine, was laying on  
6 a raft with her boyfriend, Noah. They saw her  
7 come out of the water, but didn't see her go in.

8 The other two people were also in  
9 the water. I will get their names. I don't even  
10 think Rene knows what happened.

11 Q So you drove her to the hospital?

12 A Yes.

13 Q In your car?

14 A Yes.

15 Q Anybody else go with you?

16 A Steven and Whitney went with me, but  
17 in their own car.

18 Q How long a ride is that from --

19 A 15 minutes.

20 Q -- from your dock to the hospital?

21 A About 15 minutes.

22 Q And does she still have the ice pack  
23 on at that time?

24 A I don't remember.

25 Q Did you talk with her during the car

1 DeGeorge

2                   A         All she remembered is she was about  
3     the dive into the water, and she remembers diving  
4     off the boat and feeling some pain and popping her  
5     head up and going back on the boat.

6 I tried to ask her what happened,  
7 she didn't know.

8 As a matter of fact, she told me to  
9 ask Whitney and Steven at the hospital if they saw  
10 what happened.

11 Q Rene told you to ask who?

12 A Her friends.

13 Q If they saw what happened?

14                   A     If anybody got a full view of what  
15   happened.

16 Q What did they say?

17                   A         Nobody had a clear-cut answer as to  
18 what happened. Nobody physically saw from the  
19 second she got up on the back of the stern to the  
20 time she popped her head out of the water, nobody  
21 saw what happened to her during that whole amount  
22 of time.

23 Q Nobody saw her dive in the water?

24                   A         Again, I can't answer for people. I  
25 was not there. If somebody saw her dive in, they

1 DeGeorge

2 A Huntington Hospital.

3 Q What did you do there?

4 A We waited to find out what was

5 happening. It took hours. I could not tell you

6 how many hours. But they performed all sorts of

7 tests. And they had come to the conclusion that

8 she had damaged her kidney.

9                   It wasn't to the point where it  
10         needed to be surgically removed, or irreparable  
11         damage. It's a kidney that heals itself. And she  
12         had a CAT scan, I believe, and she was  
13         subsequently admitted.

14 Q      Admitted that night?

15 A Yes.

16 Q What did you do?

17 Did you stay the night?

18                   A       No. Her parents came. Somebody  
19   called her parents and Whitney, Steven and I left  
20   after they admitted her.

21 Q What time did they admit her?

22 A I am going to say somewhere in the  
23 3:00 to 3:30 area a.m.

24 Q Were you told why they were  
25 admitting her?

DeGeorge

2                   A         As I recall, it was a fair and sunny  
3     day, but windy and the seas were choppy. Not --  
4     choppy in Cold Spring Harbor means one to two feet  
5     is a lot. Normally it's flat.

6 Q Relatively calm conditions?

7                  A        Not for Cold Spring Harbor, but  
8 relatively calm, yes. It was also a lot of boat  
9 activity, 4th of July. So boat activity breeds  
10 waves.

11 Q Nobody suggested she was knocked off  
12 the boat by a wave or something?

13 A No one suggested that.

14 Q So how long did she remain in the  
15 hospital?

16 A Well, she was -- I would say  
17 somewhere in the six-day area.

18 Q Six to eight days?

19 A Six days.

20 Q Did you visit her again?

21                   A        Yes, I did. I felt bad. I mean,  
22 everybody just went out for a nice day. You are  
23 not supposed to get hurt on a nice day like that.

24 Q Do you know what -- while -- strike  
25 that.

DeGeorge

2 going to come after you for anything, you cannot  
3 have discussed it with her.

4 Q After the accident, did you notify  
5 your broker?

6 A I called my broker and I spoke.

7 Q Whitmore?

8                   A         Whitmore. I spoke to Tom Citro. I  
9     spoke to a girl and mentioned to her there was an  
10    incident on my boat, what should I do about filing  
11    a claim.

12 Q Do you know who it was?

13 A No. I was remiss.

14 Q Do you remember when you made the  
15 call?

16                   A        Yes, about a week and a half after  
17   it happened. Just because I wanted -- honestly, I  
18   wanted to make sure that the insurance I had just  
19   bought was binding.

20 And she said no, your coverage is  
21 fine. If we get any phone calls, we will let you  
22 know.

23 And I didn't think there was any  
24 need at the time to report anything. I wanted to  
25 make sure my insurance is binding.

1 DeGeorge

2 Is GFI an insurance company? You  
3 would have to ask her counsel or her, but she has  
4 medical coverage.

5 Q So when did you first become aware  
6 that there had been a claim asserted here, an  
7 actual claim by her?

8 A When your broker called me. Your  
9 adjuster called me. When Ace's adjuster called  
10 me.

11 Q When was that?

12 A Somewhere towards the end of  
13 January. You want to know exactly. I saved the  
14 message. I can give you the time and the day.

15 Q Yes. Tell me what it says, if you  
16 can. Put it on the speaker.

17 A I don't know how -- would you do it.  
18 But I have no problem. I don't have a speaker on  
19 this phone.

20 Q Then you can't.

21 Give me the sum and substance of it  
22 and the date and time. Mel will take it down.

23 A Okay. On February 1st, at  
24 12:09 p.m.

25 Q February 1st?

1 DeGeorge

2                   A         Was the first notification I got of  
3     a claim from Janet Thomas, who is an adjuster for  
4     Ace Insurance Company. She claims she had just  
5     gotten handed a new claim assignment and to call  
6     her back at 1-800-433-0385, extension 7278. She  
7     gave me the claim number as 796S1668282.

8 Q And you called her back?

9                   A        Yes.  Yes, immediately.  And she  
10          asked me what I had done to report this, and I had  
11          told her verbally I called my broker and also told  
12          her that I contacted Ace to go on record, and I  
13          gave her the report number that I was given, and  
14          she said it meant nothing.

15 And she referred the research when  
16 the insurance company was notified by Rene's  
17 attorney.

18                           Because I said to her, you are  
19       condemning me now because I didn't -- according to  
20       you, I may not have properly reported it. Yet, I  
21       know that I called the insurance broker back in  
22       July and they said if we hear anything, we will  
23       call you.

24 And they had suggested I call Ace,  
25 and it was an automated system, and I never

1 DeGeorge

2 A No.

3 Q Did you provide anything in writing  
4 to Inamar?

5 A No.

6 Q Did you leave any messages in the  
7 automated system or --

8 A There was no way to leave a message.

9 Q What was the broker's response to  
10 you about the accident?

11 Did they tell you how to file a  
12 claim?

13 A They told me to call back if I  
14 needed to file a claim, and they told me they  
15 would let me know if they heard anything. I  
16 didn't call them back, nor hear anything from  
17 them.

18 I continued to date Rene; never  
19 heard any mention of this until February 1st and  
20 here we are.

21 Q And I take it, though, from the  
22 amount of years you have been boating and you had  
23 insurance, you understand that it is a requirement  
24 to present an insurance company with a notice of  
25 claim of an incident or accident? .

EXAMINATION UNDER OATH IN RE: MARK DeGEORGE  
DATE: MARCH 21, 2006  
WITNESS: MARK DeGEORGE

If there are any corrections to your deposition, indicate them on this sheet of paper, give the change, page number, line number, and reason for the change.

The reasons for making changes are:

- (1) To clarify the record;
- (2) To conform to the facts; or
- (3) To correct transcription errors.

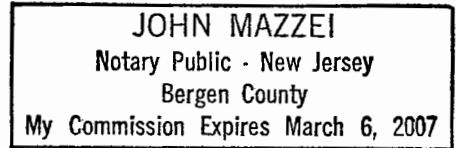
PAGE	<u>7</u>	LINE	<u>22</u>	REASON FOR CHANGE	<u>WRONG</u>
CHANGE	<u>JOHN</u>			TO	<u>TOM</u>
PAGE	<u>13</u>	LINE	<u>14</u>	REASON FOR CHANGE	<u>WRONG</u>
CHANGE	<u>YES</u>			TO	<u>NO INSURANCE</u>
PAGE	<u>8</u>	LINE	<u>4</u>	REASON FOR CHANGE	<u>ERROR</u>
CHANGE	<u>MELISSA</u>			TO	<u>STACY OR HEATHER</u>
PAGE	<u>41</u>	LINE	<u>9</u>	REASON FOR CHANGE	<u>WRONG WORD</u>
CHANGE	<u>Comma</u>			TO	<u>Comma</u>
PAGE	<u>45</u>	LINE	<u>7</u>	REASON FOR CHANGE	<u>NEVER SAID</u>
CHANGE	<u>COUNSEL CLAIMED</u>			TO	<u>—</u>
PAGE	LINE			REASON FOR CHANGE	<u>—</u>
CHANGE				TO	<u>—</u>
PAGE	LINE			REASON FOR CHANGE	<u>—</u>
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PAGE	LINE			REASON FOR CHANGE	<u>—</u>
CHANGE				TO	<u>—</u>

  
MARK DeGEORGE

Subscribed and sworn to before me

this 26<sup>th</sup> day of April, 2006.

  
John Mazzei  
(Notary Public)

  
JOHN MAZZEI  
Notary Public - New Jersey  
Bergen County  
My Commission Expires March 6, 2007

March 6, 2007  
My Commission Expires: